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6 UNITED STATES DISTRICT COURT  
7 WESTERN DISTRICT OF WASHINGTON  
8 AT SEATTLE

9 FRANKIE MANUEL MIRANDA,

10 Petitioner,

11 v.

12 UNITED STATES OF AMERICA,

13 Respondent.  
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No. 2:18-CV-1241RSL  
(16-CR-0186RSL)

ORDER GRANTING  
EVIDENTIARY HEARING  
ON DEFENDANT'S  
MOTION TO VACATE, SET  
ASIDE OR CORRECT  
SENTENCE

16 This matter comes before the Court on petitioner Frankie Manuel Miranda's motion to set  
17 aside, vacate, or correct his sentence pursuant to 28 U.S.C. § 2255. Dkt. #1.

18 On February 22, 2017, petitioner pled guilty to two counts of being a felon in possession  
19 of a firearm and one count of possession of a firearm in furtherance of a drug trafficking crime.  
20 See United States of America v. Frankie Manuel Miranda, Case No. 2:16-CR-0186-RSL (W.D.  
21 Wash.) ("CR") at Dkt. #46. In his plea agreement, petitioner waived his right to appeal. Id. at ¶  
22 14. On May 19, 2017, petitioner was sentenced to ten years. CR at Dkt. #78. He alleges that he  
23 asked defense counsel to file an appeal after sentencing. Dkt. #1 at 17. No appeal was filed, and  
24 defense counsel stated in a letter to petitioner on August 3, 2018 that neither he nor anyone in  
25 his office was ever asked to file an appeal. Ex. A, Dkt. #1 at 25. On August 23, 2018, petitioner  
26 filed this motion. He claims defense counsel was ineffective in failing to file the appeal when  
27 asked and requests an evidentiary hearing. Dkt. #1 at 18–19.  
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1 The government argues that petitioner's motion is time-barred. Generally, a § 2255  
2 motion must be filed within one year from the date on which a judgment becomes final. 28  
3 U.S.C. § 2255(f)(1). Petitioner's sentence became final on June 2, 2017. See Clay v. United  
4 States, 537 U.S. 522, 527 (2003); Fed. R. App. P. 4(b)(1)(A)(i). However, the motion may be  
5 filed up to one year from "the date on which the facts supporting the claim or claims presented  
6 could have been discovered through the exercise of due diligence." 28 U.S.C. § 2255(f)(4).  
7 Petitioner claims that he was entitled to file his motion within one year of August 3, 2018,  
8 because that was the date on which he learned in the letter from defense counsel that an appeal  
9 had not been filed. See Ex. A, Dkt. #1 at 25–26.

10 Petitioner concedes that he did not ask about the status of the appeal in his previous letter  
11 to defense counsel sometime in late 2017. Id. at 27. The due diligence requirement tolls the  
12 statute of limitations only until the petitioner could have discovered the facts underlying the  
13 collateral attack, not until he actually discovers them. Ford v. Gonzalez, 683 F.3d 1230, 1235  
14 (9th Cir. 2012) (citing 28 U.S.C. § 2244(d)(1)(D)). It is not clear exactly when defense counsel  
15 and petitioner corresponded in 2017. However, Petitioner alleges facts that, if true, could  
16 amount to ineffective assistance of counsel. United States v. Sandoval-Lopez, 409 F.3d 1193,  
17 1197–99 (9th Cir. 2005). For the sake of completeness, the Court will hold an evidentiary  
18 hearing on petitioner's allegations. See 28 U.S.C. § 2255(b).

19 For the foregoing reasons, petitioner's motion is GRANTED in part. The Court hereby  
20 ORDERS that an evidentiary hearing be held. Counsel shall be appointed to represent petitioner  
21 in the evidentiary hearing. The Court will contact the parties to schedule this hearing.

22 DATED this 8<sup>th</sup> day of February, 2019.  
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26 Robert S. Lasnik  
27 United States District Judge  
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